

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RAYMOND U. ARNDT,

Plaintiff,

v.

MOKAI MANUFACTURING, INC.,

Defendant.

Case No. CV 03-1240-HA

ORDER REGARDING ATTORNEY
FEES, COSTS AND EXPENSES

Now pending before the Court is defendant's Bill of Costs [114] and Motion for Attorney Fees[117]. This Court has carefully examined the parties' related briefing. Defendant's Bill of Costs is granted in part. The following costs are denied as specified:

COSTS AND EXPENSES

1. The defendant requests \$350 for filing fees. In Federal Court, defendants are typically not charged a fee to file their papers. This Court has no record of defendant paying a filing fee. The Court believes that \$200 was received as a *pro hac vice* fee for out of state counsel and is not recoverable. Therefore, defendant's request is denied.
2. Deposition expenses - As outlined in plaintiff's Objections to the Bill of Costs [122], defendant is entitled to recover \$3,304.20.
3. Printing and exemplification - The Court awards \$620 as reasonable expenses.
4. Travel Fees - Plaintiff's objections are sustained.
5. Witness fees and expenses - In order to take plaintiff's expert's depositions, defendant paid Mr. Drevo \$1,250 and Mr. Rosenthal \$1,997.50. These sums are recoverable as part of the deposition expenses.

ATTORNEY FEES

On April 7, 2006, defendant filed a Motion for Attorney Fees [117]. Defendant seeks attorney fees based on its assertion that plaintiff did not have a good faith basis to commence this suit and continued it after the adverse claim construction. Def's Memorandum in Support of its Motion for Attorney Fees at 3. However, plaintiff's counsel specifically rebutted both of these points. Plf's Opposition to Defendant's Motion for Attorney fees at 3-5.

This Court has no reason to disbelieve plaintiff's counsel and therefore, does not find that this case is exceptional. *see Q-Pharma, Inc. v Andrew Jergins Co.*, 360 F.3d 1295 at 1301 (Fed. Cir. 2004). Defendant's request for attorney fees is denied.

CONCLUSION

Defendant's request for costs and expenses is granted in the amount of \$7,171.70. Defendant's request for attorney fees is denied. Plaintiff's request that execution be stayed pending appeal is denied. Plaintiff is aware of the correct procedure to forestall execution of judgments pending appeal.

DATED THIS 2nd DAY OF June, 2006.

____/s/____Ancer L.Haggerty_____
ANCER L. HAGGERTY
CHIEF U. S. DISTRICT COURT JUDGE